IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Bail Appl..No. 6151 of 2007()

CRLMP.3213/2007 of DISTRICT COURT, PALAKKAD
CRIME NO.330/2007 OF ALATHUR POLICE STATION

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: PETITIONER/ACCUSED

GURUVAYOORAPPAN, S/O.CHANDRAN,
AGED 21 YEARS, CHERUVANTHY PARAMBU,
MELARCODE, ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.JOHNSON P.JOHN
SRI.BABY MATHEW

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
ALATHUR POLICE STATION,
PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6151 of 2007

Dated this the 16th day of October 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. The crux of the allegations is that 5 litres of arrack were found concealed near the house of the petitioner in the residential compound. Recovery was effected. The petitioner was not available at the time of recovery. Crime has been registered. In the seizure mahazer prepared as well as in the F.I.R, the petitioner was arrayed as an accused. Investigation is in progress. The petitioner apprehends imminent arrest. The seizure was effected on 24/8/2007.

2. The learned counsel for the petitioner submits that the contemporaneous document reveals that the seizure was effected from the compound of house No.1/378. The petitioner produces copy of his ration card before the court and asserts that the number of his residence is 1/386 and not 1/378. The seizure was hence not effected from any premises of the petitioner. The petitioner may, in these circumstances, be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor was requested to take instructions. The learned Public Prosecutor reports that the Secretary of the Local Panchayat has been questioned and it is now realised that

notwithstanding the discrepancy in the number, both houses are in the very same premises and that the said house where he resides stands in the name of the mother of the petitioner. A certificate issued by the Secretary of the Panchayat is also seen available in the case diary.

4. Having considered all the relevant circumstances, I am not persuaded to agree that this is a fit case where the discretion under Section 438 Cr.P.C can or ought to be invoked. This, I am satisfied, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007